IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.3553 OF 2007

MR SAMBHAJI MARUTI PAWAR. ..Applicant.

Vs.

THE STATE OF MAHARASHTRA ..Respondent.

Mr A. M. Saraogi, Advocate for the Applicant.

Ms S. D. Shinde, A.P.P. for the State.

CORAM: V. C. DAGA,J.

DATED: 1ST NOVEMBER, 2007.

P.C.:-
---

1. Heard Mr A. M. Saraogi,learned counsel for the applicant and A.P.P. for the respondent.

2. Perused application and the material available on record.

3. The applicant has invoked jurisdiction of this Court under Section 439 of Cr.P.C. for releasing him on bail in C.R. No.147 of 2007 registered with Vitthalwadi Police Station (investigated by Crime Branch, Ulhasnagar), for the offence under Sections 395, 397, 342, 506 of I.P.C. and under

Section 25 (3) of the Arms Act.

4. The applicant is builder by profession. The complainant Rajni Ghansham Shendge on 8.5.2007 lodged a complaint stating that her husband had booked a flat with accused. However, accused had already sold the said flat to some other person, with the result dispute required to be raised and ultimately an amount of Rs. 7,62,800/- was recovered from the accused through the court. That amount was deposited in Canara Bank and Dena Bank.

5. Thereafter, complainant and her husband booked a flat with one Suresh Vadhwa for the price of Rs. 16,80,000/-. However, subsequently, he also claimed extra amount of Rs. 25 lac for the said flat. The second deal also resulted in litigation.

6. On 7th May at 9.00 p.m. when complainant and her husband were present at their house, one person knocked doors of their house. So, she came out of the house and seen one person came there and was talking with her husband. Her husband was saying that the said person was not known to him. Then that person had caught and pushed to the husband of

complainant, followed by him two other persons came inside the house. All were talking in Hindi language. They had shown knife to the complainant and her husband and pressed their mouths. Other person who was of less height had shown pistol and he threatened to them and asked to them as to where was the cash amount. They had disclosed that if was deposited in the Bank. Then they had thrown articles here and there. Gold marriage string of the complainant, two ear ornaments; namely, "Kudya" and five glasses of silver polish were stolen by them forcefully. So also gold bangles gold chain and gold "Patlya" gold rings with so many articles were stolen which were described by her during her supplementary statement.

7. In view of the above complaint, offence came to be registered against the accused persons.

8. The applicant-accused surrendered on 9.8.2007. Initially, he was in police custody and presently he is kept in Kalyan Jail.

9. The applicant after surrender moved an application for bail which came to be rejected by an order dated 17th October, 2007 passed by

Ad hoc Additional Sessions Judge,Kalyan

observed as under:-

7."It is worth to mention here that the F.I.R. goes to show that complainant Rajani as had purchased flat from the present petitioner who is builder. The dispute was arose between them. At the intervention of the Consumer Court, she received amount of Rs. 7,62,800/- from the present petitioner. That was deposited in the Bank and thereafter she had booked the flat with one Wadhava. His statement clearly goes to show then the doors of the house were opened, one person was seen by her husband and lateron two persons came inside. That those persons not only had beaten to them but had forcefully extracted her marriage string of god, ring and silver glasses. Her supplementary statement dated 8.5.2007 also shows committing theft of gold chain and gold bangles and Patilis. The detail description was given by her on 11.5.2007 of all the articles on 20.8.2007. She has identified those articles including revolver, gold ornaments and mobile. Statement of her husband Ghansham is also supporting the prosecution.

"8. Following recovers were made at the instance of present accused namely one revolver recovered on 9.8.2007, one Tata Indigo Car bearing No. MH-04-CM-1460, cash amount of Rs. 39,000/- be effecting panchnama dated 10/8/2007, One Nokia Company"s mobile. So also the instance of co-accused Raju, gold ornaments namely four bangles, one Patli, three marriage strings came to be recovered. Injury certificate of Ghanshyam is also on record. statement under Section 27 of the Evidence Act made by accused Raju shows involvement of the present accused prima facie in committing the crime. So, considering the over all evidence, not only there is an eyewitness account, but there is also recovery evidence making out prima facie case against the accused with finding was already recorded when the previous

bail application No. 646 of 2007 was disposed of by me on 5.9.2007."

9."That apart, complainant Rajani submitted application at exh.5 and her husband Ghanshyam submitted at Exh.6 wherein both of them have apprehended danger to their life if the accused released on bail.

10. Having heard learned counsel for the applicant and A.P.P. and having seen the material available on record, one has to consider this bail application taking into account the prevailing conditions in Bombay; wherein the builders are using muscle and money power to rob money from their middle class customers. In the event of demand for refund, they teach them lesson through hired persons. The present applicant who is a builder, not only facing the present prosecution but one more C.R. being No. 22 of 2005 for the offence punishable under Sections 420, 468, and 471 of the I.P.C.

11. The applicant, prima facie appears to have conspired with co-accused Raju Ratnakar, who is the member of gangster Abu Salem. There is sufficient material on record to connect the applicant with the offence alleged. Thus, considering total material available on record and recovery from him, I do not see any case having been made out for

grant of bail.

12. The possibility of tampering with the prosecution evidence, threat to the life of the complainant cannot be ruled out. I concur with the observations made by the learned Sessions Judge in the impugned order.

13. In the result, application for bail is rejected.

14. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(V.C.DAGA,J)